IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2120 of 2005

For Approval and Signature:

THE HON'BLE MR.JUSTICE A.M.KAPADIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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KESHUMAL NAUTAMLAL &2 - Petitioner(s)

Versus

STATE OF GUJARAT &3 - Respondent(s)

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Appearance :

MR MEHUL S SHAH for Petitioner No(s).: 1 - 1.MR SURESH M SHAH for Petitioner No(s).: 1 - 1.

Ms. Archna Rawal AGP for Respondent No(s).: 1 and 2

RULE NOT RECD BACK for Respondent No(s).: 3.

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CORAM :THE HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 28/06/2005

ORAL JUDGMENT

1. By filing instant petition under Articles 226 and 227 of the Constitution of India, the petitioners seek to challenge the order dated 3.2.2005 recorded below Ex.1 in Misc. Civil Application No.8 of 2004 by the learned District Judge, Bhavnagar by which the application filed by the petitioners seeking condonation of delay of 132 days caused in filing the appeal against the order of eviction under the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 ('the Act' for short) came to be rejected.

1. Respondent No.2 issued notice cum order of eviction in the name of deceased Natuamlal, the father of the petitioners, terminating his tenancy on 15.10.2003 and passed eviction order and called upon him to vacate the rented premises in which hotel as run since 17.8.1983 and served the same upon the petitioners. The petitioners filed appeal in the Court of the District Judge, Bhavnagar against the order passed by respondent No.2 under section 9 of the Act. Alongwith the application, under section 9 (2) of the Act, to entertain the appeal after the period of limitation of 15 days from the date of the order passed by respondent No.2, the petitioners filed application for condonation of delay, pointing out sufficient causes for the delay. The learned District Judge did not condone the delay and rejected the application which has given rise to this petition at the instance of the heirs and legal representatives of deceased Natuamlal.

2. This Court has heard Mr. Mehul Shah, learned advocate for the petitioners and Ms. Archna Rawal, learned AGP for respondent Nos.1 and 2, perused the impugned order and also the averments made in the petition.

3. On perusal of the impugned order, it is seen that against the order of eviction passed by respondent No.2 the petitioner has filed Regular Civil Suit No.661 of 2003. In the said suit, the application ex.5 seeking injunction was also moved which came to be dismissed. Aggrieved thereby the petitioner filed Misc. Civil Appeal No. 146 of 2003 before the District Court, Bhavnagar which also came to be dismissed. The said order was challenged by way of Special Civil Application before this Court and the said petition was withdrawn by the petitioners. Immediately thereafter the petitioners withdrew the said suit. Thereafter within three days the petitioners filed appeal. Therefore, there is a delay of 132 days caused in filing the appeal under section 9 of the Act. In aforesaid view of the matter, according to this court, the

petitioners was ill-advised to file the civil suit against the order of eviction which has resulted in delay of 132 days in filing the substantive appeal under section 9 of the Act.

4. It is settled principle of law that no matter shall be thrown overboard without deciding it on merits and on ill-advise given by the lower litigant should not suffer.

5. The question of condoation of delay has to be decided having regard to the principles laid down by the Supreme Court in the decisions reported in the case of (i) State of Bihar &others v. Kamleshwar Prasad Singh &another, 2000 AIR SCW 2389 (paras 11 to 14 of the reported judgment), (ii) N. Balakrishnan v. M. Krishnamurthy, Judgment Today, 1998 (6) SC 242, (iii) State of Haryana v. Chandra Mani &others, AIR 1996 SC 1623, (iv) Spl. Tehsildars, Land Acquisition, Kerala v. K.V. Ayisumma, AIR 1996 SC 2750, (v) Punjab Small Industries and Export Corporation Limited and others v. Union of India and others, 1995 Suppl. (4) SCC 681, (vi) P.K. Ramachandran v. State of Kerala and another (1997) 7 SCC 566 and (vii) Collector, Land Acquisition, Anantnag v. Mst. Katiji, AIR 1987 SC 1353 and other relevant decisions on the point.

6. Applying the principles laid down by the Supreme court in the above referred to judgments to the facts of the present case, this Court is satisfied that sufficient cause was shown by the petitioners for condonation of delay caused in filing the appeal. The record does not indicate any inaction or negligence on the part of the petitioners. The petitioners have filed the appeal immediately after three days from the date of withdrawal of the suit and therefore explanation for delay offered by the petitioners is not only plausible but acceptable.

7. In aforesaid view of the matter, the order dated 3.2.2005 recorded below application Ex.1 in Civil Misc. Appeal No.8 of 2004 dismissing the application seeking condonation of delay deserves to be quashed and set aside by allowing this petition.

8. For the foregoing reasons, the petition succeeds and accordingly it is allowed with no order as to costs. Order dated 3.2.2005 passed by the learned District Judge, Bhavnagar below Ex.1 in Misc. Civil Appeal No.8 of 2004 dismissing the application seeking condonation of delay is hereby quashed and set aside. Delay caused in filing the appeal is hereby condoned, the result of which is that the application seeking condonation of delay in filing the appeal under section 9 of the Act is allowed. The District Court, Bhavnagar is directed to register the appeal and hear to decide the same in accordance with law. Rule is made

absolute.

(A.M. Kapadia, J.)

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